

SEC Staff Asks for Time: Feels Pressure From Automatic Filing Effectiveness

July 11, 2019

Insurance companies filing amendments to registration statements for their variable product registration statements, as well as mutual funds, frequently rely on Rule 485(a). Under the rule, post-effective amendments filed by registrants automatically become effective in as little as 60 days without any staff action. In the statement, the Division raised the concern that the time until automatic effectiveness may be insufficient for the Division staff to review and address all issues in a filing.

To alleviate this problem, the statement:

- “urges” registrants filing under Rule 485(a) to contact the staff regarding any issues that may raise material questions of first impression before they file; and
- “requests” registrants either to respond to any staff comments on Rule 485(a) filings at least five days before the filings become effective automatically or to delay effectiveness until all such comments have been resolved.

However, as SEC officials, including Chairman Jay Clayton, have recently emphasized, a staff statement of this type is not legally binding. See [“Has OMB Reined in the SEC?”](#) Thus, the Division’s statement merely “urges” and “requests” registrants to cooperate and does not discuss what the consequences, if any, might be for disregarding the staff’s preferences as set out in the statement.

There are many reasons why, in a given case, registrants may wish to disregard those staff preferences. Accordingly, registrants will need to carefully weigh such considerations in light of each amendment’s particular facts and circumstances.

Related Practices

[Financial Services Regulatory](#)

Related Industries

[Life, Annuity, and Retirement Solutions](#)

[Securities & Investment Companies](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.